

ORIGINAL

WILEY, REIN & FIELDING

1776 K STREET, N.W.
WASHINGTON, D.C. 20006
(202) 429-7000

December 11, 1998

OREN ROSENTHAL
(202) 828-7504
OROSENTH@WRF.COM

FACSIMILE
(202) 429-7049

RECEIVED

DEC 11 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: CS Docket No. 98-201; RM Nos. 9335 and 9345
Comments of Retlaw Enterprises, Inc.

Dear Ms. Salas:

Enclosed herewith, on behalf of Retlaw Enterprises, Inc., are an original and thirteen (13) copies of the **COMMENTS OF RETLAW ENTERPRISES, INC.** in response to the Notice of Proposed Rulemaking, FCC 98-302, in the above referenced proceeding. A copy of the Comments, on diskette, has been sent to Mr. Don Fowler and the International Transcription Service, Inc. as required by the Notice.

Should there be any questions concerning this matter, please contact the undersigned. Thank you for your attention.

Very truly yours,



Oren Rosenthal

Enclosures

No. of Copies rec'd 0413
List ABCDE

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

**Satellite Delivery of Network Signals
to Unserved Households for Purposes of
the Satellite Home Viewer Act**

**Part 73 Definition and Measurement
of Signals of Grade B Intensity**

CS Docket No. 98-201

RM No. 9335

RM No. 9345

RECEIVED

DEC 11 1998

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

COMMENTS OF RETLAW ENTERPRISES, INC.

Retlaw Enterprises, Inc. ("Retlaw") by its attorneys, hereby submits its comments in response to the Commission's Notice of Proposed Rulemaking ("Notice") in the above-referenced proceeding. Retlaw is corporate parent of entities that are broadcast licensees of 11 television stations.¹ Retlaw's principal concern with the rule changes proposed in this proceeding is the impact such changes will have on local broadcasters' ability to provide free over-the-air programming to viewers in their local service areas.

1. Introduction

The 1988 Satellite Home Viewer Act ("SHVA"), 17 U.S.C. § 119 (1998), defines an "unserved" household that is entitled to receive DBS feeds of distant network stations'

¹ KBCI-TV, Boise, Idaho; KCBY-TV, Coos Bay, Oregon; KEPR-TV, Pasco, Washington; KIDK, Idaho Falls, Idaho; KIMA-TV, Yakima, Washington; KJEO-TV, Fresno, California; KLEW-TV, Lewiston, Idaho; KVAL-TV, Eugene, Oregon; KPIC, Roseburg, Oregon (50% owner); WFXG, Augusta, Georgia; and WXTX-TV, Columbus, Georgia.

programming as a household that cannot receive a “Grade B” signal. Under the FCC’s current standard, a broadcast station’s Grade B over-the-air signal is one that produces an acceptable picture that can be received by at least fifty percent of the audience fifty percent of the time.²

The Notice proposes to redefine this standard to reflect reception by fifty percent of the audience more than ninety percent of the time.³ While this proposal is short of the Commission’s Grade A standard reception of an acceptable picture (seventy percent of the audience ninety percent of the time) and the even more draconian 99% and 100% reception proposals of EchoStar and the NRTC, redefining a Grade B signal to the new standard would drastically erode local television station audiences as shown in Longley-Rice maps submitted by the National Association of Broadcasters (“NAB”) and other commenters in response to petitions that EchoStar and the National Rural Telecommunications Cooperative (“NRTC”) filed to seek Commission action of the sort being proposed in this proceeding.⁴ The overly broad definitions of “unserved household” resulting from the changes to Grade B signal strength, as proposed by the Notice, EchoStar and the NRTC, disregard Congress’ intent in adding the “white area” exception to the SHVA. In keeping with fundamental tenets of copyright law (and the SHVA is, after all, part of the Copyright Act), Congress kept the DBS compulsory license narrowly confined. The statutory limitations on the license were lifted to cover only “*a small percentage of television*

² See 47 .C.F. R. § 73.683(a); *CBS, Inc. v. Primetime 24 Joint Venture*, 9 F.Supp. 2d 1333, 1339 (S.D. Fla. 1998) (“[T]he plain language of the [SHVA] adopts the FCC’s definition of a grade B signal (an objective test) to determine whether a household is an “unserved household.”)

³ Notice ¶ 32.

⁴ See EchoStar Petition for Declaratory Ruling and/or Rulemaking of Echostar Communications Corporation at 29; Emergency Petition for Rulemaking of the National Rural Telecommunications Cooperative at iii, 19; See also Notice ¶ 9.

households [that] cannot now receive clear signals embodying the programming of the three national television networks.”⁵

2. Local Broadcasters Provide A Unique Service To The Community That Will Be Jeopardized By Any Redefinition Of Served Households

The Commission itself has expressed concern lest it overstep its boundaries in altering the current Grade B and thereby expand the universe of “unserved” households beyond what Congress intended in the SHVA.⁶ Apart from this potential problem and the equally valid concern that satellite providers who acted in bad faith by transmitting distant network signals to customers in served households will benefit as a result of their illegal activities,⁷ Retlaw opposes the proposed changes because they are likely to place local broadcasters’ ability to serve their local markets in jeopardy.

Retlaw’s stations, like those of many local broadcasters, render a unique service to their local viewing audiences by providing a free source of information about local events and topics

⁵ House Judiciary Committee Report, H.R. Rep. No. 100-887, pt. 1, at 18 (emphasis added)

⁶ Two separate House Committee Reports pertaining to the 1988 SHVA expressly state that the “white area exception” was enacted “in recognition of the fact that *a small percentage of television households* cannot now receive clear signals embodying the programming of the three national television networks.” House Judiciary Committee Report, H.R. Rep. No. 100-887, pt. 1, at 18 (emphasis added), *reprinted in* 1988 U.S.C.C.A.N. 5611, 5621; *accord* House Energy and Commerce Committee Report, H.R. Rep. No. 100-887, pt. 2, at 19 (1988) (emphasis added), *reprinted in* 1988 U.S.C.C.A.N. 5638, 5648. Further, the House Energy and Commerce Committee expressly characterized these unserved white areas as “typically rural.” *Id.* Congress repeated this characterization in enacting the Satellite Home Viewer Act of 1994 [the “1994 SHVA”], Pub. L. No. 103-369 § 2, 108 Stat. 3477 (1994). At that time, the Senate Judiciary Committee reported that it “is especially aware of the importance of home satellite viewing to households in *rural areas*.” S. Rep. No. 103-407, at 8 (1994) (emphasis added); Notice ¶ 2.

⁷ See, e.g., “Broadcasters Give DBS a Reprieve,” *The Hollywood Reporter*, August 31, 1998; “Injunction and Summary Judgment Entered Against Primetime 24,” *Satellite Week*, July 20, 1998; Notice ¶ 15.

of local interest. Retlaw Station KBCI-TV in Boise, Idaho ("KBCI"), just instituted an automated weather system that gathers real-time weather information from several dozen locations throughout its service area, including several communities at the outer fringe of its Grade B area. KBCI has long been committed to providing reports of impending storms or severe weather conditions to all of these areas. During a serious flood threat in southwestern Idaho in 1996-97, for example, KBCI provided extensive coverage to outlying service areas that were affected.

In addition to weather, KBCI covers local news and events throughout its Grade B area and, in some cases, in communities just outside. For instance, during the recent winter Olympics, KBCI did special features on athletes who live or train in Sun Valley, an area just outside its Grade B area. KBCI also covers issues of interest to its eastern Oregon viewers, including recent reports on the controversial "60 Minutes" segment on Dr. Jack Kervorkian, addressed from the viewpoint of residents of Oregon, which has an assisted suicide statute. KBCI also has covered the Winter Carnival and other winter recreational events from McCall, Idaho, another community on the Grade B fringe. During recent elections, KBCI provided in-depth coverage of candidates for every statewide office and both of Idaho's two Congressional Districts. The station aired five debates as well as a twelve-part series that featured state races and several highly-contested local issues.

The list of local civic and charitable organizations that KBCI assists through public service announcements is a long one. A case in point is the Idaho Youth Ranch, a local organization that collects donations of clothing and household items at pick-up points located throughout KBCI's Grade B area, including several locations on the fringe. KBCI produced and

ran public service announcements for this organization, which enabled it to increase exponentially the funds raised to support orphaned children.

Retlaw's Yakima, Washington station KIMA-TV ("KIMA"), also devotes considerable resources to local news coverage throughout its Grade B area. The station's local news operation is extensive: in addition to a two-hour morning news block from 6-8 a.m., KIMA airs local half-hour newscasts at 5 p.m., 6 p.m. and 11 p.m. each weekday. These regular newscasts feature coverage of news stories and events from throughout the station's service area, and the morning program includes a local public affairs segment featuring area events. KIMA also covers political campaigns and elections in every district within its service area and provides alerts and information on weather and other local emergencies. Coverage of local civic and charitable activities, cultural and other events is given through public service announcements. Again, events in communities throughout the station's Grade B area are included. Retlaw submits that none of this would be possible if local residents relied on a distant network affiliate from North Carolina as their principal source of network programming.

In its current incarnation, the SHVA grants DBS providers a copyright license to transmit distant network signals that do not contain these valuable local services. While distant network signals are of course better than no signal at all, local broadcast signals provide the highest value service to households within their market. Should the Commission accept a more expansive definition of unserved households under the SHVA and allow DBS providers to transmit distant network signals to households that can receive local signals with the proper antenna,⁸ valuable

⁸ The Notice also requests comment on the methodology for measuring signal strength at individual locations. In this regard, Retlaw takes issue with testing procedures proposed by EchoStar and described in the Notice at ¶ 9. Specifically, to assume that most rooftop antennas are not equipped with rotor capability or to assume that viewers are unwilling to or incapable of changing an antenna's direction seems quite unrealistic. Nor is it reasonable to base the standard (Continued...)

local programming and information of the kind described above will no longer be available to viewers who rely on DBS service as their principal delivery system for television programming. Moreover, as audiences in newly-defined communities are eroded, local stations will no longer have sufficient economic interest to provide as much coverage of local news and events there, to the detriment of viewers who rely on over-the-air TV. The definition of unserved households therefore should be as narrow as possible, to favor the possible reception of local network signals and programming over a compulsory license for distant network signals where such reception is not strictly needed.

3. Any Proposed Rulemaking Is Unnecessary In Light Of Impending Congressional Action To Impose A More Effective Solution.

As a result of recent technological advances, "local-into-local" distribution of network signals affords a more effective, fairer means of incorporating broadcast network programming into the service packages being received by DBS subscribers. While legislation to provide "local-into-local" service failed to come to a full vote in 1998,⁹ House Commerce Committee Chairman Bliley (R-Va) and Senate Commerce Committee Chairman McCain (R-Ariz.) are committed to reintroducing this legislation in the next session.¹⁰

(...Continued)

on the lowest quality equipment or the most egregious signal attenuation due to use of an excessive number of splitters.

⁹ See H.R. 2921 (1998); S. 2494 (1998).

¹⁰ See 144 Cong. Rec. E1999 (Sept 10, 1998) ("I [Bliley] just would like to state for the record, my firm commitment to revisiting and resolving these issues in a comprehensive manner early next year..."); Statement of Senator John McCain Chairman, Senate Committee on Commerce, Science, and Transportation: Full Committee Hearing on S. 2494, The Multichannel Video

(Continued...)

However, to DBS providers' apparent dissatisfaction, these legislative proposals would require satellite providers to carry, upon request, all non-duplicative broadcast signals located within the relevant local market in order to qualify for such a compulsory license. This solution represents the current equilibrium point in a delicate legislative process which must balance the interests of broadcasters, satellite carriers, cable providers, and the public. While it is unclear at the present time exactly where the ultimate balance will be struck, the Commission should refrain from taking any action at this time that would tend to compromise Congress' ultimate ability to craft a solution.

In Retlaw's view, "local-into-local" would solve the problem of network programming availability and would have the added advantage of making broadcasters' local programming – including local news, public affairs, public service announcements, local emergency warnings and information, and political broadcasts and advertisements, available to DBS subscribers. In addition, "local-into-local" would preserve the economic integrity of the system of broadcasting that has served the country so well for so many years and would create a truly level playing field among DBS, over-the-air broadcasting and terrestrially based multi-channel video distributors such as cable operators and wireless cable systems creating the competitive markets that Congress envisioned in the Telecommunications Act of 1996.

Retlaw strongly supports this legislation to amend the SHVA to provide for "local-into-local" distribution, with appropriate must-carry and retransmission consent rights for local stations. Indeed, it is only fair that in exchange for their valuable copyright license DBS

(...Continued)
Competition Act of 1998 (October 1, 1998)

providers should be willing to accept obligations to which their competing distribution media are subject. Rather than advancing the interests of consumers in the long run, precipitous adoption of Grade B signal redefinition proposals could have the unfortunate effect of destroying the momentum building for a legislative effort that promises ultimately to provide a more effective solution.

4. Conclusion

For the forgoing reasons, Retlaw urges the Commission to refrain from altering the current Grade B standard and to reject suggested revisions to individual measurement procedures until Congress has had the opportunity to consider local-into-local legislation. In the alternative, the Commission should craft rules which would provide the greatest possible local service to households and allow distant signal retransmission only where local service truly is unavailable.

Respectfully submitted,

RETLAW ENTERPRISES, INC.

By: 

Carl R. Ramey
Donna C. Gregg
Oren Rosenthal

Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, DC 20006
202-429-7000

December 11, 1998

DECLARATION OF DON DRILLING

I, Don Drilling, Vice President of Retlaw Broadcasting, L.L.C., do hereby affirm that I have read the attached Comments and verified, to the best of my knowledge, the factual statements contained therein. I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 10th day of December, 1998.


Don Drilling